United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 18-1348**
	)	**Issued: January 4, 2019**
U.S. POSTAL SERVICE, TRENTON CARRIER ANNEX, Trenton, NJ, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 11, 2018 appellant filed a timely appeal from a March 28, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish left lower extremity conditions causally related to the accepted January 29, 2018 employment incident.

FACTUAL HISTORY

On February 9, 2018 appellant, a 52-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 29, 2018 he injured his left lower extremity in the performance of duty. He indicated that he was walking down the street when his ankle and shin

[1] 5 U.S.C. § 8101 *et seq.*

started to hurt and swell. Appellant further indicated that the pain worsened during the course of the day to the point where he could no longer walk. He described his condition as distal tibia stress, left side shin and ankle. Appellant stopped work on February 5, 2018.[2] OWCP did not receive any additional evidence with the Form CA-1.

In a February 16, 2018 claim development letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the factual and medical evidence necessary to establish his claim and also provided a questionnaire for completion. OWCP afforded appellant 30 days to provide the necessary factual information and medical evidence.

OWCP subsequently received a January 29, 2018 handwritten statement from appellant. Appellant noted that he was walking down South Broad Street when he started feeling pain in his left ankle and shin area. He continued working until he reached a location on Hunter Avenue at which point he stopped delivering mail because the pain was getting worse. Appellant further indicated that he brought his mail back in order to seek medical treatment.

On February 7, 2018 Dr. Arthur R. Bartolozzi, a Board-certified orthopedic surgeon, evaluated appellant for complaints of left shin pain beginning January 27, 2018. His narrative report noted that there was no history of trauma to the area. A list of appellant's active problems included bilateral knee arthritis, leg pain, and bilateral knee primary osteoarthritis. Upon physical examination of his left leg, Dr. Bartolozzi observed mild edema in the pretibial area and diffuse tenderness over the subcutaneous area of the tibia. He indicated that x-ray examination showed no evidence of fracture or periosteal reaction. Dr. Bartolozzi diagnosed leg pain. He also noted that appellant's examination was consistent with a tibial stress injury, but that there was no sign of obvious stress fracture on x-ray. Dr. Bartolozzi advised that a magnetic resonance imaging (MRI) scan would corroborate the diagnosis, but it was not required if appellant was able to diminish his activities. In a separate note also dated February 7, 2018, he indicated that appellant had a stress injury to the left distal tibia. Dr. Bartolozzi recommended minimal walking, four hours daily, for 10 days.

On February 9, 2018 the employing establishment issued appellant a properly completed authorization for examination and/or treatment (Form CA-16), which indicated that he was authorized to seek medical treatment at Aria Health for his claimed January 29, 2018 left lower extremity injury -- distal tibia, left shin and ankle.

On February 27, 2018 Dr. Bartolozzi submitted Part B of Form CA-16, an attending physician's report, based on his February 7, 2018 examination. He described that appellant experienced left shin pain and swelling after working January 27, 2018. Dr. Bartolozzi further noted that appellant had an x-ray done on January 30, 2018 which revealed a bone spur in his Achilles. He diagnosed left shin pain. Dr. Bartolozzi also noted a possible tibial stress injury that would require a left leg MRI scan to confirm. He checked a box marked "yes" indicating that appellant's condition was caused or aggravated by the described employment activity.

[2] The employing establishment indicated that appellant had prior leg injuries unrelated to work. On January 29, 2018 appellant reportedly stated that he had a possible blood clot that was not work related. However, when he filed his claim on February 9, 2018 he reportedly advised the employing establishment that his union representative told him to file Form CA-1.

Dr. Bartolozzi explained that appellant could have increased pain or swelling with prolonged periods of walking, which could exacerbate symptoms. He also completed a duty status report (Form CA-17) which described a history of injury of "walking [and left] ankle started to hurt." The reported diagnosis was possible tibial stress injury. Dr. Bartolozzi indicated that appellant had been advised that he could resume work as of February 8, 2018. The only restriction was a three-hour limit on walking intermittently.

By decision dated March 28, 2018, OWCP denied appellant's claim. It accepted that the January 29, 2018 incident occurred as alleged and that a medical condition had been diagnosed. However, OWCP found that the evidence of record was insufficient to establish causal relationship as it did not include a well-reasoned medical opinion explaining how the accepted January 29, 2018 work incident caused or aggravated the diagnosed medical conditions of left Achilles bone spur, bilateral knee arthritis, and bilateral primary knee osteoarthritis.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is causally related to the employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

In order to determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.[6] There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged.[7] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[8] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.[9]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[10] The opinion of the physician must be

[3] *Supra* note 1.

[4] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[5] *Michael E. Smith*, 50 ECAB 313 (1999).

[6] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[7] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[8] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[10] *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[11] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish left lower extremity conditions causally related to the accepted January 29, 2018 employment incident.

Dr. Bartolozzi examined appellant on February 7, 2018. He noted a January 27, 2018 date of injury, with no reported history of trauma. Dr. Bartolozzi indicated that appellant's pain "began insidiously after working on a Saturday." However, on the Form CA-1 appellant reported having been injured on Monday, January 29, 2018. A physician's opinion on causal relationship must be based on a complete factual and medical background.[13]

Dr. Bartolozzi's various reports referenced leg pain, left shin pain, Achilles bone spur, possible left distal tibial stress injury, bilateral knee arthritis, and bilateral knee primary osteoarthritis.[14] His February 7, 2018 treatment notes did not specifically address the cause of appellant's left lower extremity condition(s). The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[15] Therefore this report is insufficient to establish appellant's claim.

In his February 27, 2018 attending physician's report, Dr. Bartolozzi diagnosed left shin pain, and noted "possible tibial stress injury." Pain is a symptom, not a medical diagnosis.[16] Moreover, Dr. Bartolozzi's finding of a "possible" tibial stress injury is speculative and equivocal.[17] Regarding causal relationship, he noted that he believed appellant's condition was caused or aggravated by employment activity. Dr. Bartolozzi noted that appellant "could" have increased pain or swelling with prolonged periods of walking, which could exacerbate symptoms. His assessment regarding causal relationship is similarly equivocal. Dr. Bartolozzi did not definitively state that prolonged walking either caused or contributed to appellant's left lower extremity condition(s), but merely that it "could" have. A physician's opinion must be expressed

[11] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[12] *James Mack*, 43 ECAB 321 (1991).

[13] *Victor J. Woodhams*, *supra* note 11.

[14] Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012).

[15] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[16] *See supra* note 14.

[17] *Ricky S. Storms*, 52 ECAB 349, 352 (2001).

in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition(s) and appellant's specific employment factor(s).[18] As Dr. Bartolozzi failed to provide a well-reasoned opinion on causal relationship, his reports are insufficient to establish entitlement to FECA benefits.

In order to obtain benefits under FECA an employee has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.[19] Because appellant has failed to provide such evidence demonstrating that his diagnosed left lower extremity condition was causally related to the accepted January 29, 2018 employment incident, he has not met his burden of proof to establish his traumatic injury claim.[20]

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his diagnosed left lower extremity condition was causally related to the accepted January 29, 2018 employment incident.

[18] *Victor J. Woodhams*, *supra* note 11.

[19] *Supra* note 4.

[20] When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608, 610 (2003).

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2018 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 4, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board